Present: Ennis and Schneider JJ.

1923.

KIRIHENAYA *v.* JOTIYA.

72—D. C. Kegalla, 5,798.

Kandyan law—Deed of gift—Renunciation of the rights of revocation—

A Kandyan deed of gift which expressly renounces the right of revocation, and which is not dependent on any contingency, is irrevocable.

A deed of gift is a contract, and there is no rule of law which makes it illegal for one of the parties to the contract to expressly renounce a right which the law would otherwise give him.

IN this case the plaintiff sued the defendant for a declaration of title to the lands described in the plaint, pleading title upon a deed of conveyance No. 20,755 dated October 5, 1922, from Kuda Ridi.

The defendant denied plaintiff's title, and pleaded title in himself, claiming the same from the donee of the said Kuda Ridi.

Kuda Ridi, the admitted owner, first gave deed of gift No. 597 (D 1), and revoked the said deed No. 597 by deed of revocation No. 20,754 (P 1), and transferred the same to the plaintiff, appellant, on deed No. 20,755. The defendant claimed title from the donee on deed No. 597.

The parties went to trial on the following issue: Is deed No. 597 of December 20, 1908 (D 1), a revocable deed? The learned Judge (V. P. Redlich, Esq.) delivered the following judgment, dismissing plaintiff's action, with costs:—

There was only one issue framed in this case. It was agreed on by the parties. It related to the interpretation of a deed of gift (D 1) No. 597 of December 20, 1908, by a Kandyan to her grandson. This grandson by a deed of March, 1920 (D 2), sold his rights to defendant.

The original Kandyan donor, however, by deed No. 20,754 of October 5, 1920, purported to revoke deed of gift (D 1), and on the same date sold the portion in dispute to plaintiff.

The question then arose whether the original deed (D 1) was revocable.

Mr. Molamure relied on *15 N. L. R. 193* which, however, is not on all fours with this case: in the deed in that case there was a condition attached to the gift which condition was not fulfilled by the donee. He also read to Court from *Modder's, pp. 173-175 and p. 154.* The statements therein contained were accepted by Mr. Swan, but he argued that this case could not be brought in under those circumstances, inasmuch as in her deed (D 1) the donor gave up her right to revoke the deed.

At a later stage under protest by Mr. Swan, Mr. Molamure called the donor to prove under what circumstances he revoked the deed; her evidence was in conflict with the terms of her deed of revocation, and I do not believe her oral evidence.

Mr. Molamure further relied on *Modder, pp. 193-194,*—but failed to prove that the donor had re-entered into possession, or had quitted donee's premises and had taken up residence elsewhere from where she got support.

1922.

Kirinenaya v. Jotiya

Mr. Swan's argument that the donor had renounced her right to revoke appeared to me to be sound, and I answer the issue against plaintiff, and dismiss his action, with costs.

The following is the deed (D 1):—

Deed of Gift No. 597.

Know all men by these presents dated December 20, 1908, I, Vidanehenayalage Kuda Ridi of Welimanna in Tumpalata pattu in Paranakuru korale, do hereby declare as follows:—That for and in consideration of the filial love and affection and various other good qualities, and for the sake of his future welfare, I, the aforesaid Vidanehenayalage Kuda Ridi of Welimanna, do hereby gift and make over to Vidanehenayalage Abanchiyahenaya of Welimanna, one of my grandsons, the lands, high and low, together with the plantations and buildings standing thereon, more fully described in the schedule hereunder written, all valued at Rs. 500. And I hereby declare that I shall not revoke this deed of gift at any time in any manner, or change it in any way after date hereof. Therefore, the said Vidanehenayalage Abanchiyahenaya, or his heirs, &c., from date hereof, can possess and own the said undivided shares of lands so gifted, and I shall have no claim whatever to them, and further the said donee and his heirs, &c., can do anything they like with the said property. I, Vidanehenayalage Appuwahenaya, father of the said donee, Abanchiyahenaya, hereby accept with thanks and pleasure the said gift from the said donor Vidanehenayalage Kuda Ridi.

In witness whereof we, the said donor and acceptor on behalf of donee, have set our signatures to three copies of the same tenor and date as these presents on December 20, 1908, at Mawatagoda,

(Sgd.) ——

———

Schedule referred to.

1. An undivided half share out of Miwittawelakumbura, &c.

Endorsement.

This deed was revoked to-day by deed No. 20,754 attested by me.

(Sgd.) D. G. Fernando,
Notary Public.

October 5, 1920.

R. L. Pereira (with him *D. B. Jayatileke* and *H. V. Perera*, for plaintiff, appellant.

Samarawickreme (with him *Navaratnam*), for defendant, respondent.

September 8, 1922. Ennis J.—

This appeal raises once again the question of the irrevocability of a Kandyan deed of gift.

The facts are as follows:—

On December 20, 1908, one Kuda Ridi, "in consideration of the filial love and affection, and various other good qualities and for the sake of his future welfare," conveyed to her grandson Abanchiyahenaya a half share in a land as a gift, and she further expressly

declared that she should not revoke this deed of gift at any time in any manner, or change it in any way after the date of its execution. The defendants claim in succession to Abanchiya by a document of March 29, 1920. On October 5, 1920, Kuda Ridi by deed No. 20,754 revoked her gift under the deed of December 20, 1908, and she executed on the same day a deed No. 20,755, by which she conveyed the property on a sale to the plaintiff. The learned Judge held that Kuda Ridi could not revoke her earlier deed of gift. The plaintiff appeals from this decision.

There are a number of cases dealing with this question of the irrevocability of Kandyan deeds of gifts. Most of the reported cases consider the position when a condition imposed by the gift has not been fulfilled or has been partly fulfilled, or where there has been some sort of consideration in past services or an undertaking to pay debts. There are, however, several reports of cases which directly bear on the point now in issue. The first of these cases was decided in 1835 (*1,564, Austin's Reports, p. 15*). That case cited the fact that there were a number of decrees which set out the principle that where a clause is inserted in a deed of gift expressly debarring the donor from the privilege of resumption, the deed is irrevocable, and a footnote give the names of the cases referred to in the judgment. One was a case of 1817 and another a case of 1822. The subsequent cases expressed the principle which has been followed in judgments of some length, and it would not be necessary to do more for the purpose of this case than cite one of the latest, viz., the case of *Banda v. Hethuhamy*.[1] In that case Lascelles C.J., said: "Where, on the other hand, the donee has failed to carry out the conditions on which the gift was made, he cannot invoke the protection of the renunciation clause, which was intended to take effect only if the stipulations in the deed were complied with. The principle laid down by Armour involves an examination of the deed in order to ascertain the true intention of the parties. In the deed now under consideration, it is clear that the donor's intention was that the irrevocability of the gift should depend upon the due observance of the stipulations, subject to which the donation was made."

Middleton J., in his judgment in the same case, said that the principle of the power of revocation is founded to a great extent on the conditional nature of most of these Kandyan deeds of gifts, and he held that in the case before him the deed intended that the donee should work the lands and pay off the mortgage, and that if he did so, it should be irrevocable; if not, it should be revocable.

These two judgments in my opinion show the principle that should be followed in deciding questions of this sort which arise on Kandyan deeds of gifts. The deed itself must be examined in order to ascertain the true intention of the parties, and where the deed of

[1] *(1911) 15 N. L. R. 193.*

1922.

ENNIS J.

Kirihenaya v. Jotiya

gift expressly renounces the right of revocation, and the gift is not dependent on any contingency, the gift is irrevocable. The reason would seem to be that a deed of gift is a contract, and there is no rule of law which makes it illegal for one of the parties to the contract to expressly renounce a right which the law would otherwise give him or her.

I would accordingly dismiss the appeal, with costs.

SCHNEIDER J.—I entirely agree.

Appeal dismissed